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*Media system and  
media eco-system:  
regulatory aspects  
of the media system  
in Bulgaria*



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### **ABSTRACT**

This paper explores the regulatory aspects of the Bulgarian democratic media system as an example of the transition of an Eastern European media system from communism to democracy. The new media institutions in Bulgaria came into being after the democratic changes in the country in 1989 that replaced the totalitarian propaganda media. The democratic media system has continued to develop and diversify until today encompassing traditional and new media. Media regulation is not an element of the media system, is a crucial factor of in creating media channels and the independence of the media system. Media regulation is a guarantee of media freedom and the autonomy of media institutions. The purpose of this paper is to conclude to what extent the law has been an effective tool for strengthening the media system to the public interest in Bulgaria, provided that in any period of the transition, the interference of political and economic forces in media activities has been looming.

**KEYWORDS:** media system, media ecosystem, media regulation, Bulgarian media system.

\* The article was written within the research project “Media System and Journalistic Culture in Bulgaria” (Research in the light of the three models of media – politics relationships of Hallin and Mancini). The project is implemented by University of Veliko Tarnovo St. Cyril and St. Methodius and is funded by the Research Fund under contract KP-06-H35 / 6 – 18.12.2019.



## **INTRODUCTION**

Legislation is the backbone of any regulation. Sound and effective laws successfully support self- and co-regulation in any social sphere. Legal instruments create as a specific, relatively independent legal reality through the regulation of people's behaviour, characterized by special rules and procedures, the role of which is to ensure the protection of human rights and interests through equal opportunities, openness and fairness. Legal acts mainly reflect the will of political majorities, but they do not come into being in vacuum and are socially dependent. Therefore, this study will focus on analysing the pieces of legislation that have been passed to establish and upgrade the media system in Bulgaria without embracing strict legal positivism. It will be multidisciplinary research blending legal, political and media science. In addition to the exploration of the legal acts, the study will also try to explain the situation in which the Bulgarian constitution and other laws relevant to the media system have been created. The emphasis, however, will be on the legal acts which instead of being a pillar of public values in many cases have proven to be rather controversial in Bulgaria. The discussion will start from the different approaches to the notion of media systems nowadays to clarify what is the type of media system in Bulgaria. Then the main regulatory instruments that have been adopted and implemented to structure the new democratic media will be presented and discussed. The aim is to conclude to what extent the law has been an effective tool for strengthening the media system and for advancing democracy, bearing in mind the serious risks of political and economic interference. This will also draw the attention of scholars to the democratic transformations in Bulgaria and enhance comparative research, including more thoroughly countries from Southeastern Europe.

The methodology applied is based on desktop research, legal research, and comparative analysis.

## **THE CONCEPT OF A MEDIA SYSTEM**

The concept of a system is widely recognized in modern science, and it has been adopted in various fields and disciplines including media studies. The media system is not a static phenomenon since it combines not only structural but functional elements and the design and operation of the media system can be viewed in various contexts. Quite often, terms like media, media system and media environment are used freely and interchangeably. There is no legal definition or a common policy definition at a European level of what constitutes a media system. The media is a complex entity, and this complexity is denoted by the term "system" which presupposes a unity of elements that exists and functions together. Behind the frequently used notion

of a media system, the researchers' aspiration for a systematic study of media phenomena can also be discerned. This implies such search, selection and management of information that can accomplish consistent and coherent results related to the components, the internal relationships, as well as the external interactions of the media. Due to the complexity and dynamism of the media system, it is hard for comparative studies to dwell on the entirety of its elements. That is why several aspects of the media system often come within the focus of researchers. Exploration approaches apply also various perspectives to study best this system and its relationships with other systems.

The history of the notion gets back to the "Four theories of the press" published in the fifties of the last century (Siebert, Peterson, and Schramm, 1956) and there are a few books in the field of communication that have received as much attention as this seminal work called by Curran (2011) "the comparative bible of media research." (Curran, 2011) In their famous monograph "Comparing Media Systems: Three Models for Media and Politics" (2004) Daniel S. Hallin and Paolo Mancini introduced a more detailed examination scheme focused not only on the press but on the Western European media systems through the prism of their relationships with politics. According to Hallin the media systems represent a set of "media institutions and practices" that interact and shape each other and they are embedded in broader social, political, economic, and cultural systems. (Hallin, 2016). It will not be an exaggeration to state that comparative media studies were significantly enriched by the experiences in Central and Eastern Europe (CEE) after the radical democratic shifts in the region which proved that the reshaping of the media systems, their progress or setback depends to a significant extent on the degree of maturity of the democratic society. The importance of the democratic structures and the quality of democracy for accelerating (or retarding) media reforms in CEE have been discussed in depth by Jakubowicz and Sükösd during the first decade of the century (Jakubowicz and Sükösd, 2008). In the same vein, Dobek-Ostrowska argues that "one of the most visible features, which distinguish CEE from Western mature democracies, is the lower level of democratic standards, on the one hand, and weaker economic development, on the other." (Dobek-Ostrowska, 2015) The author proves the different situation in the CEE countries compared to the eighteen Western countries, analyzed by Hallin and Mancini (2004), using statistical data from influential indexes including the widely cited Democracy Index, Freedom of the Press (Freedom House), World Press Freedom Index (Reporters without Borders), etc. Applying an economic approach, Aslund and Djankov discuss the economic reforms in Central and Eastern Europe and highlight the tendencies that replace "the dominant economic problem after the initial transition with the

demand for benefits and the spread of corruption.” “Ultimately, democratic institutions pushed the decision-making process towards greater economic freedom and made governments more accountable and transparent,” but these efforts took years and were at the expense of the sacrifices of society as a whole. (Aslund and Djankov, 2015).

The approach taken by Dobek-Ostrowska and other experts is more suitable for the exploration of the media systems in the former communist countries, which differ in historical traditions, economic development, and level of democracy and where after the fall of the Berlin Wall “hybrid media models” have emerged because of the social processes which combine the characteristics of the passage from one social system to another and of technological proliferation (Dobek-Ostrowska, 2019). These countries are under the impact of much more complicated factors than Western states and their societies and culture vary considerably from one another. The factors stressed by Dobek-Ostrowska should not be ignored when studying the CEE media systems since they have an essential impact not only on the paths these systems have taken but, on their design, operation, and prospects, too.

### **FROM MEDIA SYSTEMS TO MEDIA ECOSYSTEMS**

The revolutionary changes in the communications of the last century led to the permeation of communication science by a new portion of concepts from other fields, the aim of which was to reveal the new stage in the creation and dissemination of information and content and the role of individuals in it. While the four theories of the press adapted the system theory to the media field and especially to the press and Hallin and Mancini’s framework offered a classification of Western media systems based on such criteria as media market, political parallelism, professionalization of journalism and the role of the state, now terms like ‘media ecology’ and ‘media ecosystem’ have taken a prominent place in media research. This is mainly due to the emergence of the new interactive media and the internal modifications of the media system, which nowadays also incorporates the digital platforms alongside traditional media. We are also witnessing the evolvement of a new-media culture in which “people no longer passively consume media (and thus advertising, its main revenue source) but actively participate in them, which usually means creating content, in whatever form and on whatever scale.” (CiacuGrasu, 2008) However, the new notions aimed at capturing the nature of the multidimensional media environment are also working notions, a starting point for research or simply inspiring metaphors. Drawing the map of media ecology and paying tribute to the originality of the reflection and research of Dennis D. Cali Gamaleri suggests a multiplicity of keys to deciphering “the

Ecology of Media” – metaphor, theory of groups, bibliography, environments, perspective, discipline (Gamaleri, 2019). The ideas behind these explanatory terms are mainly about balance, harmony, ethics, and futurology. The media ecology bridges the present and the future, between the already created and what should be achieved by the media by the interaction of communication, digitization and mediatization when shaping reality.

At a European level, Recommendation CM / Rec (2011) 7 of the Council of Europe on a new notion of media is the first document to declare that the concept of “media ecosystem” should be understood in the broadest sense as “to cover all actors and factors the interaction of which allows the media to function and fulfill their role in society” (Council of Europe, 2011). The instrument presents six basic features of the media and once categorized as such the new entities have to perform a public function, i.e., to fulfill obligations similar to those set on traditional media. Koltay also comments on the novel media situation and stresses that “these days the rights holder can be hard to identify” and “it is inevitable that those service providers that do not produce content should also be considered as holders of media freedom.” (Koltay, 2017) Referring to the intermediaries the importance of which is constantly rising, he concludes that “while they were recognized as actors in the past the role of intermediaries has changed fundamentally” (Koltay, 2017) (social media performance and people’s engagement on platforms prove this every day – B.Z.).

In fact, the media ecosystem perspective demands researchers and policy makers to study more factors and conditions that impact the media in their interconnectedness in order to conclude whether a given system is comprehensive, balanced and smoothly functioning to be defined as eco-system.<sup>1</sup> In order to explore the media as ecosystem the institutional part should be examined closely with the social setting in which the media operate: the media environment which by and large can be enabling (favourable for the development of freedom of expression and the media) or unfavourable (raising impediments and causing the so called “chilling effect” on journalists). Since freedom of expression is fundamental for the operation of the media, it is logical the quality of the environment to be determined on the basis of its impact on freedom of expression as a principle, right and value in a democratic society: “The media ecosystem is shaped by the interplay of legal, political, socio-cultural, economic, technological and other influences and its vitality is crucial for ensuring an enabling environment for freedom of

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<sup>1</sup> In line with these considerations is Raycheva’s observation that “the peculiarities of the modern information and communication environment suggest a transformation in the perception of the media.” (Raycheva, 2015) In turn this results in innovative approaches to the media and its role.

expression and information in democratic society.” (Council of Europe, 2016).

The media channels, each with its own specific features, which function and complement each other to convey information, ideas and cultural forms in the modern world and the media regulatory body/ies that oversee the sector comprise the core of the media system. Over time, the media models become more complex and include more communication channels and services as a consequence of the technological and social changes. Consequently, they require new regulatory approaches as well as novel exploratory perspectives – both to the media and its regulation. The eco-system methodology provides an opportunity to study systematically and, in their interrelationships the different components of the media system thinking about the future.

### **MEDIA SYSTEM AND REGULATION**

The modern media system is established and operates through regulation. If one follows Dobek-Ostrowska’s method, one can conclude that it interacts with other systems and its viability depends on the state of democracy and the technological level reached by society.

Media laws provide for the setting up and functioning of the various types of media and regulatory body/ies. The media channels are not mere conduits of content but institutional holders of the right to freedom of expression alongside individuals (Barendt, 2007). The responsibility of the media in the modern world is enormous – both for the daily exercise of freedom of expression and for structuring public opinion as well as for the dissemination of culture, education, and entertainment for the people. At the level of state power, the media system communicates with the political branches, occupying the position of a neutral power that mediates the public sphere. In the modern state the institutional embodiment of the neutrality of the media as a power is the independent media regulator staying at an arm’s length from the executive branch. Ideally media authority is considered to be the institutional guarantee of media freedom. In this respect the independence of this body and its activities are crucial to be “guarantees for the guarantee” of free speech.

The freedom of all players – whether new or traditional and operating in the media ecosystem – must be ensured by an appropriate framework to provide clear and unambiguous requirements for their duties and responsibilities in accordance with the standards of democracy, the rule of law and human rights. The regulatory response must be flexible, graded and differentiated according to the level of development of the subjects (media or quasi-media) and the role they play in the processes of content creation and dissemination. These conclusions of the Council of Europe also emphasize the importance



of regulation being “the glue” of the media ecosystem (Council of Europe Recommendation/2011) .

Against the backdrop of the rapid technological and structural changes in the sector Feintuck and Varney (2006) recommend novel approaches for the reformation of the regulatory framework premised on public values to be undertaken (Feintuck and Varney, 2006). This guiding principle for the democratic states is even more valid for the young democracies where policies should be constantly focused on the assertion and furtherance of these values. It is a pity that in the young democratic states in CEE media policies have not been consistent enough to protect efficiently public principles and values and to cope with politicization and commercialization of the media.

In the area of free expression and communication, the hard question for legislators, experts and decision-makers is always how to draw the line between freedom and non-freedom and more precisely between freedom and the possible restrictions in order for a modern democratic society to function properly. Media regulation is becoming even more intricate in the era of convergence. Though, the goal pursued is to avoid the negative and to enhance the positive effects of the regulated activity, it differs in several respects from the regulation and control in other social spheres. In this regard in order to respond to all interests involved, the regulatory impact should also embody working (not decorative) regulatory/self-regulatory and co-regulatory measures the importance of which rises in the digital age. Another peculiarity of the regulation and control in the media sector is that they should be open to public participation and input. The public has a special role to play in the enhancement of the transparency of media regulators of all types and eventually in the constant democratization and advancement of the regulation and control in this area.

These precepts of good media regulation have been hard to implement in Bulgaria, which is the example here. No wonder Dobek-Ostrowska defines the Bulgarian media system as a representative of the politicized model building on the three-model scheme by Hallin and Mancini where Bulgaria could be classified under the polarized pluralist model. Dobek-Ostrowska considers the historical and regional factors but also the fact that “the media system is a very dynamic structure, which is responsive to its technological, political, and economic background. It systematically evaluates and changes much more quickly than political and economic systems.” (Dobek-Ostrowska, 2015) These characteristics are visible in the regulatory and institutional analysis that follows.

### **EMPIRICAL RESEARCH: REGULATORY AND INSTITUTIONAL ASPECTS OF THE BULGARIAN MEDIA SYSTEM**

The media system in Bulgaria is a set of institutional elements that comprise press, radio and television organizations and Internet platforms, performing a media function as well as the media regulator being the core of this system. Though not regulated by special laws, the press and the Internet platforms are regulated by general laws. Additional components of the system may include news agencies, advertising agencies and professional media organizations according to Sonczyk (Sonczyk, 2009). The role of the professional media organizations that represent civil society in the media is to maintain self-regulation, to strengthen media accountability and to keep the high-quality standards of work.

Freedom of expression and freedom of the media are guaranteed in the Bulgarian Constitution (1991) and in legislation. However, law implementation and media practices have exhibited many flaws during the period of transition and after it.

Human rights together with the right to free expression and access to information occupy a prominent place in the Bulgarian Basic Law and follow the model and expression of the European Convention on Human Rights (ECHR), which made possible Bulgaria's accession to the Convention and membership in the Council of Europe (Bulgaria joined the Council of Europe in 1992 – B.Z.). However, these initial promising steps in the 90s deteriorated in the following years and constitutional provisions could not stop malpractices in the media environment – commercialisation, tabloidisation, clientelism, deprofessionalisation. Georgieva-Stankova (Georgieva-Stankova, 2011) claims that “legal regulatory mechanisms were urgently needed to set the rules of the game” after the fall of the communist regime. She characterizes the reform in media policy, regulation and accountability being slow, “while the steps taken towards state emancipation, liberalization and privatization were overhasty, unpremeditated and premature.” The consequences of that approach was that “strategic economic and political allegiances have started exerting serious power over media content through direct editorial control, gate-keeping of information, bias in representation, programme choice, commercialization and the tabloidization of press and electronic media formats towards more entertainment, sensationalism and scandallousness.” (Georgieva-Stankova, 2011) Raycheva and Todorov express similar opinions. Raycheva (Raycheva, 2013) summarises, that “the processes of demonopolization, decentralization and liberalization are random” while Todorov (Todorov, 2015) emphasises the fact that „the lack of a national concept and strategy for the development of the Bulgarian media environment after 1989 is an extremely important

reason for its incomplete transformation. “The lack of systematic upgrading and regulation in the media is tangible and the pursuit of rapid privatisation in this area has prevailed over the public interest. The shortcomings of the media environment and the delayed adoption of the regulatory framework have also affected media research. For a long time, media studies have tackled isolated burning issues while comprehensive multidisciplinary ones have been dealt with sporadically.

The deficits of the BG media regulation persist until now. Censorship is forbidden in the Constitution but every day journalistic practices are deplorable. “Self-censorship and self-restrictions that journalists impose on themselves in their daily work have become an alarming, unwritten norm. And in emergencies and periods of uncertainty they become even more visible” is the conclusion of the study “Journalism without a mask” carried out by the Association of European Journalists – Bulgaria (AEJ-Bulgaria) and „Alpha Research” Sociological Agency (Valkov, 2020). According to the author there is a serious increase in the culture of pressure over journalists particularly in 2020. The most perilous example is the political pressure on the media which has not diminished but is “relatively twice as large as other centers of influence on media content – economic entities, advertizers, state and municipal institutions.” (Valkov, 2020) These inferences serve as a proof that the law in the field has hardly created and sustained the necessary legal guarantees for the independence of the media and journalists against politicization.

The great victim of the ineffective legal framework in Bulgaria is factually freedom of expression, which has been severely crippled. Currently, the country ranks 112th in terms of freedom of expression according to the Reporters without Borders (RWB) rating, which is the lowest position among the European Union member states. The media environment could hardly be characterized as enabling one. In a statement, it was the RWB Secretary General Christophe Deloir who condemned the political manipulation of the media in Bulgaria and the deliberate creation of a climate bordering on „media civil war“. (Antonova, 2019) In 2022 the situation is not better and the head of the EU/Balkans office of RWB has stated that “the right to information is going through a deep crisis in Bulgaria. Admittedly, repression or violence against journalists is extremely rare.” (Lamarge, 2022) The conditions for the unfavourable assessment and low ranking are various. On the one hand, it is about the politicians and big businesses that constantly meddle in media activities threatening its independence, a behavior which the law obviously cannot stop. On the other hand, it is the media environment as such, which, though a free one, generates “non-freedom” according to Popov. (Popov, 2021)

The reasons for this contradiction are also rooted in the weak journalists' and journalism associations' performance. Popov censures the existence of "uncritical media, poor and sponsored journalism, relying on paid publications and unchecked Facebook information, lack of verification of facts and floods of hybrid news." (Popov, 2021)

At the dawn of Bulgarian democracy the Constitutional Court (CC) which is a new body for the national institutional system established by virtue of the Constitution from 1991 adopted at least 14 decisions related to the principles of the democratic media system and its synchronization with human rights standards. One of the most frequently cited decision is Decision N° 7 of 1996 on constitutional case N° 1 of 1996. In it CC interprets the constitutional provisions relating to freedom of speech (art. 39), freedom of the media (art. 40) and the right to information (art. 41), justifying self-regulation (lack of a special law) for the print media and regulation by means of a special law for the radio and television. However, until a special piece of legislation regulating broadcasting was adopted in 1996 the media had been a mere toy in the hands of political parties. Media activities were hostages of political and business interests (which were in fact closely intertwined) and situational agreements. For seven years since the beginning of the democratic changes in the country no laws had been passed with the purpose of guaranteeing the democratization of the media sector. Then when finally the first broadcasting act was adopted (1996) many of its provisions were declared to be incompatible with the Basic Law by the CC. The whole regulation was blocked for two years. Only in 1998 the new up-dated and supplemented Radio and Television Act (RTA) (SG, N° 138 from 1998, which is still in force with a lot of amendments – B.Z.) put an end to the open clash between the political majorities and CC.

It should be underlined that the BG broadcasting act began operating much later than in other Central and Eastern post-communist countries allowing unruly development of the media market for a long period of time. This peculiarity is duly noticed by researchers who underline that it has led to "a general drive for liberalisation and less regulation, considered to be the proper way for the realisation of the values of freedom of expression and access to information, crucial for building democratic society". (Smilova, Smilov, Ganev, 2011) The authors' gloomy observation is that "in the absence of clear normative standards, it is no surprise that the media is increasingly seen as an extension of either partisan or corporate strategies". The inception of the media system was not premised on public values but on party interests.

Although not fully efficient, both radio and television acts (1996, 1998) have also brought positive results. Firstly, they provided for a permanent regulation of basic public relationships in the media field and declared the two

national media – the Bulgarian National Television (BNT) and the Bulgarian National Radio (BNR) public broadcasters. Secondly, they laid the foundations of the overall coherent regulation of the electronic broadcasting media by allowing commercial radio and television stations to start functioning under a statutory publicly announced procedure. Third to this, let us not forget that the law is not only the backbone of media regulation but also of self- (and co-) regulation in the sector. It was expected RTA to be a pillar of the different types of regulation but in fact regulators failed to meet that expectation. Fourthly, the law provided for the structure and membership of the national broadcasting authority which was the first body of that sort in the national institutional design. However, due to the fast-developing technological processes and the expansion of online media this piece of legislation needs timely amendments and better systematic ordering (or a full replacement by a more modern as structure and letter regulatory act).

RTA is not the only domestic law related to the media, but as a special law it can be considered central for the media system though a number of other laws are also applied to the work of the media organizations in Bulgaria. General laws regarding all media and treating various aspects of media-related activities are for instance, the Commercial Law, the Criminal Code, the Copyright and Related Rights Act, the Competition Act, the Health Act, the Consumer Protection Act, the Child Protection Act, etc. With respect to the broadcasting sector the complementarity of the two special laws that are particularly important for the dissemination of programmes are RTA which stipulates various requirements for the broadcasting of audiovisual content, and the Electronic Communications Act (ECA, SG, N° 41 from 2007, amended until 2021) which regulates the infrastructure for the provision of electronic communications carried out by “transmitting, transferring, broadcasting, transmitting or receiving signs, signals, written text, images, sound or messages of any kind by wire, radio waves, optical or other electromagnetic environment”.

Another important legal piece that has been adopted after long discussions is the Law on Access to Public information (SG, N° 55 from 2000, amended until 2019). The law regulates public relationships related to the implementation of the right of access to public information, as well as the re-use of public sector information. This law is indispensable to the work of the democratic media and journalists since it constitutes the foundation of an open and free public debate and transparent government. However, it was passed eleven years after the democratic shifts and not without strong political opposition. Two years later the Law on Protection of Classified Information (SG, N° 55 from 2002, amended until 2021) came into force to regulate state and official

secrets. Great political pressure was also put on the commissions mandated to open and make public the files of the former totalitarian security service (DC) in Bulgaria. For 25 years since the beginning of the democratic reforms four commissions with different memberships have been in operation. At last, the fourth commission set up in 2006 began to work effectively though the difficulties stemming from the obstructive policies of some political parties have continued until today.

A specific feature of RTA 1998 was that together with the regular incompatibility requirements for holding positions in the media regulator and in the management boards of the national radio and television operators, it envisaged a special condition of incompatibility related to former informants and State Security associates. No lustration law has been passed in Bulgaria after the democratic changes, but lustration has always been an important item on the public agenda. To provide a historically true and grounded explanation of the achievements and failures of the Bulgarian transition, it was considered healthy for the democratic reforms to discuss thoroughly this topic. The cited provision also corresponded to the public feeling that former informants and accomplices of the communist State Security service could not be leaders in such important for the formation of the democratic culture and education sector as the audiovisual media. In 2013, on a joint complaint filed by the Bulgarian Socialist and the Movement for Rights and Liberties Parties' deputies, CC overturned the lustration provision in the RTA, which was a unique norm in the whole Bulgarian legislation. The court ruled that lustration was discriminatory and contrary to the Constitution and international law. The decision was deeply disappointing, especially for this part of Bulgarian society, which supported the moral purification of society from communist ideology and the rapid inculcation of democratic culture in any social sphere. The decision can also be seen as a sign of the politicization and regression of CC in recent years.

Initially, the debate on the future of the Bulgarian media system covered the press alongside the electronic media but eventually newspapers and periodicals remained outside the scope of a possible special legal regulation (although press laws had been adopted in some former communist countries as part of the new media legislation packages). Smilov, Smilova and Ganey (2010) report that when free newspapers entered the print press market in 2008 they were generally confronted with hostility by the traditional press agencies because of their perceived inferior journalistic quality. The revenues from advertising in the print media in the country declined at a fast speed during the years. There are no direct or indirect state subsidies for the Bulgarian print media: there are no reductions in value added tax, no preferential rates for

telecommunications services and no lower social security contributions for the sector. This renders the sustainability of the smaller circulation newspapers and hence larger pluralism beyond the party press problematic. Cholakov (Cholakov, 2010) emphasizes that “one of the taboos of the Bulgarian media legislation after 1990 was that a press law could not be passed in Bulgaria because it was accepted and it is still accepted that it will be restrictive in principle” – a conclusion drawn by the media community without in-depth comparative examination of other legal systems and of the national market. Georgieva-Stankova also comments on the topic and states that “being only recently emancipated from the burden of official state censorship, the press became an easy prey in complicated maneuvers of political gamesmanship”. (Georgieva-Stankova 2011) The author also shares the view that “as far as the press is concerned, its status had to be defended many a time, with opinions varying from the need for press legislation, to complete self-regulation and currently, towards new demands for greater state and legislative control equally in matters of print and broadcast media.” (Georgieva-Stankova 2011) Such overall piece of legislation balancing regulation and self-regulation and encompassing all types of media including electronic platforms could possibly be elaborated once the EU DSA/DMA package comes into force.

One of the biggest shortcomings of RTA is that it failed to introduce an effective system of public funding of BNT and BNR and left both national broadcasters during the years of transition to be financed by the budget (plus, advertising and sponsorship) and not by society. Such an approach has kept national public media in a dangerously close position to the government. A system of payment for receiving the programs of the national radio and television operators existed in communist time when a monthly fee was paid through the Bulgarian postal services. After the democratic changes, the monthly fee was abolished for some time and then proved impossible to be reintroduced. According to art. 98 RTA an independent radio and television fund is set up at the audiovisual regulator – the Council for Electronic Media (CEM) – for financing radio and television activities. The law provides for detailed spending of the fund but the concrete provisions remained a dead letter only. The funding, mainly based on a state subsidy has deprived BNT and BNR of the opportunity to become real public service operators and other media operators – to get adequate financial support for the implementation of socially significant projects. This has been perilous for public media independence in Bulgaria which has always been under political threat. The results of the country report “Bulgaria: Monitoring Media Pluralism in the digital era 2021” indicate significant risks to media pluralism in Bulgaria, and one of the urgent tasks authors claim is “further reassessment of the Radio and

Television Act regarding PSM independence, funding and management, following the requirements of EC Communication on State aid in electronic media” (Monitoring media pluralism, 2021) Several drafts have been prepared so far to modernize the two national public institutions and to improve their funding, but political elites are reluctant to take steps towards legal amendments.

A conspicuous deficiency of RTA is that it failed to adequately regulate media ownership and cross-ownership in various media and thus meet the expectations of the Bulgarian society for greater transparency in the media sphere. In 2018 the media mogul Delyan Peevsky (the owner of the New Bulgarian Media Group deemed close to the Turkish-minority Movement for Rights and Liberties party and sanctioned for corruption by the US Department under Magnitsky Human Rights Accountability Act – B.Z. ) initiated amendments to the Law on the Mandatory Deposit of Printed and Other Works and on Announcing Distributors and Providers of Media Services (SG, N° 108 from 2000, amended until 2019) in order to increase transparency of ownership and financing of various media service providers. However, the legal instrument does not envisage a workable controlling mechanism if violated and though a special registry was set up at the Ministry of Culture it has a decorative but not a substantial role. That is why the suspicion of society is that Peevsky initiated the law to use it as a weapon against his opponents. An additional fact in support of such a conclusion is that the proposals for amendments were not targeting competition legislation but a marginal legal instrument that had little in common with the substantial problems of media transparency. Some issues important to media pluralism, such as the levels of media ownership and concentration, including cross-ownership have not ever been addressed in RTA or in the national competition laws.

Other comments relate to the transposition of the European legislation and this process is a matter of great concern in Bulgaria. Apart from its mechanistic incorporation into domestic acts, European norms are not applied according to the spirit of the European principles. The most illustrative example of such perverted interpretation of the laws is that there are cases when the requirements for proportionality are not strictly observed if administrative penalties and coercive administrative measures are imposed on the media. This approach was vivid during the imposition of huge fines on Economedia, the publishing company of the business newspapers “Capital” and “Dnevnik, and on the provincial newspaper and websites „ZovNews“ (<http://vratzanews.com>, <http://www.vecherni-novini.bg>, <http://zovsport.com>) as well as on the electronic site of the newspaper (<http://zovnews.com>, subsequently canceled permanently by FSC – B.Z.) in 2015 according to the then Law on Market Abuse of Financial Instruments by the chairman of the Financial Supervision



Commission (FSC). The rationale for the sanctions was that during the banking crisis in the summer of 2014, when one of the big Bulgarian banks – the Corporate and Commercial Bank (CCB) – was on the brink of going bust and placed under special supervision in 2015 (CCB was declared bankrupt in 2015 with the starting date of its insolvency 6 November 2014 – B.Z.), the cited media outlets published articles about the financial state of another big bank in the country – First Investment Bank (FIB) and thus generated ungrounded tension and insecurity among the public. In fact, the objectives of the law transposing the European directive were quite different and related to the protection of the market and market instruments from abuse, but the easiest target was apparently the media and journalists who were obliged to inform public opinion in any situation and the fines aimed at harassing them and forcing to disclose their sources of information. The case is a classic example of the chilling effect of a purposefully wrong interpretation and implementation of the law and is indicative of several things. Firstly, of the lack of genuine media enabling environment in Bulgaria, secondly, that any law that may affect the media and freedom of expression must be interpreted when applied giving priority to the protection of freedom of expression (in line with the case law of the ECtHR) and thirdly (and more than that), that any modern law has to some extent a direct or an indirect connection with freedom of expression, and as soon as it is established, the possible risks to this fundamental right (and other related rights) must be carefully discussed when formulating specific legal provisions.

Digitalization in Bulgaria proved to be another legal debacle since domestic laws had been misused to cover up the real intentions of politicians and businesspeople for personal gain. “Digitalization has been postponed several times and the collective understanding is that the process is deliberately protracted, opaque and political parties and economic circles are trying to find the best solution for themselves, but not for the benefit of citizens. The voice of commercial interests overshadowed the civil society representatives during the debate on the adoption of this law”. (Antonova and Georgiev, 2013)

In 2013, all four multiplexes that were to operate in the first phase of digitalization turned out to be financed by one bank – the already mentioned CCB – and this fact reveals the process of fusion of the broadcasting sector not only with politics but with the banking business as well.<sup>2</sup> After the bankruptcy of

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<sup>2</sup> Merging continues at a high pace now and incorporates other sectors such as telecommunications, energy, financial markets, investment, real estate, etc. Contrary to “most European newsrooms which remain more or less independent of their very powerful shareholders” the case of Bulgaria is quite different and the media are a mere tool for the networks of “polysectoral” moguls to gain profits and influence (Lamarge, 2022).

CCB in 2015 digitalization in Bulgaria stopped and practically came to nothing. Meanwhile, on 19.05.2011, the European Commission initiated criminal proceedings against Bulgaria regarding the compatibility of several provisions with Directive 2002/77 / EC. The Commission recommended introducing a new competitive procedure to allow a new efficient player to enter the terrestrial digital telecommunications market before 2013. Experts emphasize that many legal obstacles have been deliberately placed before potential participants and thus have emptied the entire process without any socially significant result. (Zahariev, 2015) Currently, in Bulgaria only one multiplex is in operation with a coverage of 96.5% of the population, which broadcasts five TV channels with national coverage (mandatory broadcasting of the public television operator BNT1, BNT2 and BNT3, as well as commercial bTV and NOVA), as well as six regional channels in Sofia. In 2021, only 118,200 Bulgarian households watched digital terrestrial television for free, according to the national statistics. Due to the chaotic and predominantly private interests' oriented amendments in the legal framework digitalization in Bulgaria, instead of leading to innovation, modernization and a greater variety of high-quality programs, burdened BNR and BNT with huge debts since they have to pay for the digital broadcasting of their programs. The loser is, of course, the public interest.

The picture will not be complete if the issue of media self-regulation is not briefly touched upon. During the transition, the establishment of effective self-regulation was one of the key goals in Bulgaria even though an arbitration commission had been settling disputes at the Union of Bulgarian Journalists (UBJ). The associations of media owners and publishers have always exercised considerable influence on the legislative process as well as on the adoption of the Code of Media Ethics in 2004. Weak civil society and disorganized media associations are the other reasons for this apparent asymmetry of regulatory impact. In the digital age the independence of the media, their professionalism and moral integrity are essential objectives that can be achieved through the establishment of new accountability mechanisms (including online) that suit the demands of the new media environment (Zankova and Glowacki, 2018). The public is still waiting for such mechanisms to be discussed and implemented.

Based on the EC guidelines for the transposition of AVMSD in domestic legislation, self- and co-regulation are particularly encouraged nowadays in the electronic media field through codes of conduct developed by media service providers and service providers of video-sharing platforms in cooperation with other sectors, such as industry, trade, professional and consumer associations or civil society organisations. Not only RTA is important for expanding self- and co-regulation, but also other laws that may have a bearing on these types of

regulation. For example, in 2003 the Law on the Restriction of Administrative Regulation and Administrative Control over Economic Activity was adopted (SG, N° 55 from 2003, amended until 2021) and its objective was to encourage the economic activity by keeping within socially justified limits the administrative regulation and control exercised by the state and the local bodies. In 2004 an attempt was made to supplement the law with provisions which stipulate for the delegation of competences of administrative control to professional organisations. The proposed deconcentration of administrative power was envisaged for the registration regimes only. The amendment of the law, however, did not take place and the bill was put aside. Thus, the opportunity to test the setting of controlling functions on professional organisations in different sectors, including the media, failed. The application of these procedures was expected to strengthen both self-regulation and co-regulation, which if it had happened, would have been a valuable national experience in this direction.

## **CONCLUSION**

The media legislation in Bulgaria reflects all the difficulties that the country has been experiencing in the process of transition and the subsequent consolidation of democracy. The EU accession, digitalization and the new platforms operation have made the overall picture even more blurred. At the end of the second decade of the 21st century there is an unprecedented merging of telecommunications, media and online industries plus, the financial and banking sectors in Bulgaria. The law, through its specific methods of social regulation and control, could not improve the situation in public interest. The national mentality to avoid the legal norms and to show no respect to them, where possible, impedes the necessary social support for the proper implementation of media laws. The lack of a stable middle class and a strong and demanding civil society that strive consistently to strengthen the rule of law principles in the country has led to additional negative effects. Even the constitutional culture, enriching legal and democratic culture at the beginning of the democratic transformations, was severely undermined. However, no attempt has been made to ensure constitutional protection of the media and the media regulator (as in Poland, Portugal and Spain, for instance) after it has become clear that political majorities unscrupulously juggle media legislation and neglect the independence and the public function of the media. Logically the self-regulation that emerged on this basis is ineffective and there are no examples of co-regulation whatsoever.

The technological revolution raises new demands for Bulgaria's media industries, regulators, and policymakers. Society does not only experience

the impact of the new larger market but also the formation of a novel public sphere. Regulation must protect the values of human rights and freedom of expression that is unfolding in the convergent public sphere against parties' and oligarchs' interests. This will be a huge challenge for the Bulgarian society and for the Bulgarian media legislation. On the one hand, the media system should free itself from political dependencies (over-politicization) and open opportunities for the meaningful exercise of freedom of expression and active public participation across the traditional and new media. On the other hand, regulation should assure a smooth-functioning and stable media eco-system facing the future. The dubious heritage of the democratic transition rooted in the poisonous ties between the media and political elites and the misunderstanding of the role of law as a restriction rather than a guarantee for media freedom will make these tasks hard to achieve.

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